

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK A. FREGIA,

Plaintiff,

v.

CHEN, *et al.*,

Defendants.

Case No. 1:20-cv-01024-KES-EPG (PC)

ORDER DENYING PLAINTIFF'S
SUPPLEMENTAL MOTION FOR
ATTENDANCE OF WITNESSES

(ECF No. 198)

Mark A. Fregia is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On September 29, 2025, Plaintiff filed a Supplemental Motion for Attendance of Witnesses. (ECF No. 198).

For the following reasons, the Court will deny Plaintiff's Motion.

I. BACKGROUND

The Court issued a Second Scheduling Order on June 12, 2025. (ECF No. 182). The order provided procedures and deadlines for the case to proceed to trial. That Order provided the following procedures to obtain the attendance of unincarcerated witnesses who refuse to testify voluntarily:

If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, the witness must be served with a subpoena. Fed. R. Civ. P. 45. In addition, the party seeking the witness's presence must tender an appropriate sum of money for the witness. *Id.* In the case of an unincarcerated witness, the appropriate sum of money is the daily witness fee of \$40.00 plus the witness's

1 travel expenses. 28 U.S.C. § 1821. Because no statute authorizes the use of public
 2 funds for these expenses in civil cases, the tendering of witness fees and travel
 3 expenses is required even if Plaintiff was granted leave to proceed *in forma*
pauperis.

4 If Plaintiff wishes to obtain the attendance of one or more unincarcerated
 5 witnesses who refuse to testify voluntarily, Plaintiff must first notify the Court in
 6 writing of the name and location of each unincarcerated witness. The deadline to
 7 notify the Court of in writing of the name and location of each unincarcerated
 8 witness is **August 28, 2025**.

9 The Court will then calculate the travel expense for each unincarcerated witness
 10 and notify Plaintiff of the amount(s).

11 Plaintiff must then, for each witness, submit to the Court a money order made
 12 payable to the witness for the full amount of the witness's travel expenses plus the
 13 daily witness fee of \$40.00. The subpoena will not be served upon the
 14 unincarcerated witness by the United States Marshals Service unless the money
 15 order is tendered to the Court. The deadline to submit a money order to the Court
 16 is **September 26, 2025**.

17 On August 28, 2025, Plaintiff filed motion for extension of time (ECF No. 193), which
 18 the Court granted as follows:

19 The deadline to file a motion for attendance of witnesses is extended to September
 20 29, 2025. Any opposition to such motion shall be filed on or before October 20,
 21 2025. Any reply to any opposition is due November 10, 2025. Also, the deadline
 22 to notify the Court in writing of the name and location of each unincarcerated
 23 witness is extended to September 29, 2025. The deadline to submit a money order
 24 for witness's travel expenses to the Court is October 29, 2025.

25 (ECF No. 194).

26 On September 2, 2025, Plaintiff filed a motion for attendance of witnesses. (ECF No.
 27 195). Plaintiff provided the names of two attorneys with the Department of the Attorney General
 28 for the State of California, Lyndsay Crenshaw or Jiaye Zhou and Plaintiff claims that one of the
 two attorneys "will be in court representing the defendant [sic]." (ECF No. 195, p.2).
 Furthermore, Plaintiff states that because he is an indigent inmate, he can only pay for one of the
 named attorneys. (*Id.*) As such, Plaintiff states that he should not have to pay for the attorney who
 is appearing in Court and representing Defendant in trial and will use this attorney to avoid
 paying a mileage fee for travel. (*Id.*, p.4).

On September 9, 2025, the Court issued an order, highlighting the lack of clarity in

1 Plaintiff's request. The Court advised Plaintiff if he wished to inform the Court of his trial
2 witnesses, the information may be included in his pretrial statement, due no later than November
3 14, 2025. (ECF No 196). Moreover, to the extent Plaintiff was seeking a court order at the time,
4 the Court summarily denied such request. (*Id.*).

5 **II. PLAINTIFF'S SUPPLEMENTAL MOTION FOR ATTENDANCE OF**
6 **WITNESSES**

7 On September 29, 2025, Plaintiff filed a supplemental motion for the attendance of
8 witnesses (ECF No. 198). In the motion, Plaintiff states he is requesting an additional witness, for
9 a total of three witnesses. Plaintiff claims that all witnesses at one time or another were employed
10 at the Office of the Department of the Attorney General as "Deputy Attorney Generals and/or
11 Supervisors at the D.O.J in San Diego, CA. and Defendants [sic] legal counsel." Plaintiff lists the
12 three witnesses as: current Deputy Attorney Generals Lyndsay Crenshaw and Jiaya Zhou, and
13 former Deputy Attorney General Sarah E. Singer. (ECF No. 198, p.1). Plaintiff requests that he be
14 provided a "court subpoena to impeach without fee" because he is an "indigent Plaintiff who is
15 also a prisoner with nothing to hide in regard to this lawsuit." (*Id.*, p.2).

16 Plaintiff's request for a trial subpoena for Sarah Singer does not comply with the Court's
17 second scheduling order. Plaintiff does not include information regarding the location of the
18 witness, so that the Court can calculate the travel expense for the witness. Nor does Plaintiff
19 include a money order made payable to the witness for the witness's travel expenses plus the
20 daily witness fee of \$40.00.

21 Nor may the Court either waive this fee or pay it with Court funds. As the scheduling
22 order explained, no statute authorizes the use of public funds for these expenses in civil cases.

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III. CONCLUSION

Accordingly, Plaintiff's Supplemental Motion for Attendance of Witnesses (ECF No. 198) is DENIED.

IT IS SO ORDERED.

Dated: **October 14, 2025**

/s/ Eric P. Grosz
UNITED STATES MAGISTRATE JUDGE